

MIRIRAI MUHUSHWA

Versus

LILIOSA STELLA MUHUSHWA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 2 & 3 SEPTEMBER 2009 & 21 JULY 2011

S Mlaudzi for plaintiff
L Chikwakwa for defendant

Civil Trial

KAMOCHA J: At the commencement of the trial the parties advised the court that they reached agreement to the effect that the marriage had irretrievably broken down. Consequently, the divorce may be granted by consent.

Further, the parties agreed that each party retains the property in their possession as their sole and exclusive property in respect of the movable property.

Finally the parties abandoned the issue of maintenance.

The issue that was left for the determination of the court related to the distribution of the two immovable properties namely house number 1936 Dulivhadzimu Township and house number 61 Dulivhadzimu Township, Beitbridge.

Each party gave viva voce evidence. As is often the case, parties in matters such as this try to outdo each other in an attempt to disentitle each other. Their evidence is usually exaggerated and at times some of it is completely false. It is the duty of the court to analyze their evidence and endeavour to arrive an equitable distribution of their matrimonial property.

The plaintiff in this matter told the court that he had two immovable properties in Beitbridge in Dulivhadzimu Township. He said he had acquired house number 61 Dulivhadzimu Township before he married the defendant. He had started staying in the house in 1983. He, however, only got an occupier's lease agreement two years later on 4 July 1985. In 1987 he got a loan from his employers to purchase the said property. The loan was for \$500 and was approved on 20 May, 1987 and repayments were to commence on 25 June 1987 at \$50,00 per month and would be repaid by 30 March 1988.

He produced the lease agreement, a letter approving his loan and a receipt of payment of \$500,45 to Mwenezi-Beitbridge Rural Council. The documents were filed of record in his bundle of documents.

Plaintiff contended that the house was not matrimonial property. He said the house was initially occupied by his nephew. When he went to live there, the house was used as a family house.

He alleged that defendant only started living with him as boyfriend and girlfriend in 1987.

It is observed that that was the year plaintiff obtained a loan from his employers to purchase the house.

The plaintiff then told the court that the matrimonial home was house number 1936 Dulivhadzimu, Beitbridge which he suggested should be sold and proceeds shared 75% and 25% between the parties. He would get the 75% while the defendant would get 25%. The reason for that ratio was because the defendant has been receiving rentals since the parties separated. He said he would reluctantly accept a 50-50 share of the proceeds.

Under cross examination it was established that house number 61 Dulivhadzimu which had only two rooms when it was bought had five more rooms added to make it a seven roomed house in 1988. The plaintiff prevaricated and was evasive when asked when he started to live with the defendant as husband and wife. He wanted the court to believe that although he had paid lobola for the defendant in 1987 she remained his girlfriend until he solemnized his marriage in 1994. The correct position even according to his own story would be that the parties were married customarily in 1987 when he paid the bride price. His suggestion that she only became his wife on 30 October 1994 is clearly baseless and must be rejected.

He accepted under cross examination that the defendant did make some contribution. It also came out under cross examination that he wanted to give house number 61 Dulivhadzimu to a daughter he sired with another woman.

The plaintiff had contended in his evidence that he was offering the defendant a share of 25% from the proceeds of house number 1936 Dulivhadzimu because she had been collecting rentals from the house but did not tell the court that he also was collecting rentals from house 61 Dulivhadzimu until he was probed in cross examination. It was established that he lived in a company house and letting out house number 61. He does not want that house to be sold so that the proceeds could be shared between the parties. He wants to keep that

house for himself and have the other house sold so that he could get a 75% share for himself. That is a selfish attitude.

The defendant's story was that she was currently living in house number 1936 Dulivhadzimu Township, Beitbridge since the parties started living separately. She stated that the parties started living together as husband and wife since 1984.

The plaintiff paid lobola in 1984 and parties got customarily married that year. They started to live in house number 61 Dulivhadzimu that year. She produced a document filed of record showing that she was the wife of plaintiff and was listed as his dependent in 1984. Accordingly, she averred that the plaintiff's suggestion that the parties were only married in 1994 was false.

There is merit in her assertions as the story of the plaintiff that he had paid lobola but the defendant remained his girlfriend until he married her in 1994 is devoid of any merit.

There is also merit in her story that house number 61 Dulivhadzimu was bought after the parties had got married. The parties started staying in the house in 1984 but plaintiff only bought it in 1987. While the money used to purchase it was borrowed from plaintiff's employers the defendant also made a contribution by supplementing the plaintiff's salary. She did that through cross-border trading. She said she was buying and selling goods. She told the court that she borrowed \$150 from her sister as capital to start that business.

It was her evidence that the money she realized from that business was used to buy building materials such as window frames to extend the house from a 2 roomed house to a 7 roomed one. The extensions were done during 1987 and 1988. The work on the extensions to the house was complete by the time the parties upgraded their marriage.

It was her testimony in conclusion that when the parties separated the plaintiff left her in house number 1936 while he went to stay at house number 61. She therefore requested that she be awarded house number 1936 Dulivhadzimu while plaintiff keeps house number 61 Dulivhadzimu.

An analysis of the evidence presented by the parties reveals that the plaintiff was not candid with the court about the acquisition of house number 61 Dulivhadzimu. He also was less than candid with the court about the contributions made by the defendant. He was untruthful about when he got married to the defendant. Above all he was selfish in the way he wanted the property to be distributed.

In the result I would issue the following order.

It is ordered that:-

1. A decree of divorce be and is hereby granted;
2. The plaintiff be and is awarded as sole owner of the property known as house number 61 Dulivhadzimu Township, Beitbridge;
3. The defendant be and is hereby awarded as the sole owner of the property known as house number 1936 Dulivhadzimu Township, Beitbridge;
4. Each party shall pay its own costs.

Samp Mlaudzi & Partners plaintiff's legal practitioners
Sansole & Senda defendant's legal practitioners